

- (2) Take steps to assure that all its employees and officers responsible for the collection, maintenance, use, and dissemination of government records are informed of the requirements of this chapter.

(b) Each agency shall compile a public report describing the records it routinely uses or maintains using forms prescribed by the office of information practices. The public reports shall be filed with the office of information practices on or before December 31, 1993. The public reports shall include:

- (1) The name and location of each set of records;
- (2) The authority under which the records are maintained;
- (3) The categories of individuals for whom records are maintained;
- (4) The categories of information or data maintained in the records;
- (5) The categories of sources of information in the records;
- (6) The categories of uses and disclosures made of the records;
- (7) The agencies and categories of persons outside of the agency which routinely use the records;
- (8) The records routinely used by the agency which are maintained by:
  - (A) Another agency; or
  - (B) A person other than an agency;
- (9) The policies and practices of the agency regarding storage, retrievability, access controls, retentions, and disposal of the information maintained in records;
- (10) The title, business address, and business telephone number of the agency officer or officers responsible for the records;
- (11) The agency procedures whereby an individual may request access to records; and
- (12) The number of written requests for access within the preceding year, the number denied, the number of lawsuits initiated against the agency under this part, and the number of suits in which access was granted.

(c) Each agency shall supplement or amend its public report, or file a new report, on or before July 1 of each subsequent year, to ensure that the information remains accurate and complete. Each agency shall file the supplemental, amended, or new report with the office of information practices, which shall make the reports available for public inspection. [L 1988, c 262, pt of §1; am L 1989, c 192, §4; am L 1991, c 167, §2; am L 1992, c 118, §2]

**Note**

Filing requirements. L 1992, c 118, §3.

**[§92F-19] Limitations on disclosure of government records to other agencies.** (a) No agency may disclose or authorize disclosure of government records to any other agency unless the disclosure is:

- (1) Compatible with the purpose for which the information was collected or obtained;
- (2) Consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided;
- (3) Reasonably appears to be proper for the performance of the requesting agency's duties and functions;
- (4) To the state archives for purposes of historical preservation, administrative maintenance, or destruction;
- (5) To an agency or instrumentality of any governmental jurisdiction within or under the control of the United States, or to a foreign government if

specifically authorized by treaty or statute, for a civil or criminal law enforcement investigation;

- (6) To the legislature or any committee or subcommittee thereof;
- (7) Pursuant to an order of a court of competent jurisdiction;
- (8) To authorized officials of a department or agency of the federal government for the purpose of auditing or monitoring an agency program that received federal moneys;
- (9) To the offices of the legislative auditor, the legislative reference bureau, or the ombudsman of this State for the performance of their respective functions; or
- (10) Otherwise subject to disclosure under this chapter.

(b) An agency receiving government records pursuant to subsection (a) shall be subject to the same restrictions on disclosure of the records as the originating agency. [L 1988, c 262, pt of §1]

### PART III. DISCLOSURE OF PERSONAL RECORDS

#### Note

Part heading amended by L 1989, c 192, §5.

[§92F-21] **Individual's access to own personal record.** Each agency that maintains any accessible personal record shall make that record available to the individual to whom it pertains, in a reasonably prompt manner and in a reasonably intelligible form. Where necessary the agency shall provide a translation into common terms of any machine readable code or any code or abbreviation employed for internal agency use. [L 1988, c 262, pt of §1]

**§92F-21.5 REPEALED.** L 1990, c 250, §4.

[§92F-22] **Exemptions and limitations on individual access.** An agency is not required by this chapter to grant an individual access to personal records, or information in such records:

- (1) Maintained by an agency that performs as its or as a principal function any activity pertaining to the prevention, control, or reduction of crime, and which consist of:
  - (A) Information which fits or falls within the definition of "criminal history record information" in section 846-1;
  - (B) Information or reports prepared or compiled for the purpose of criminal intelligence or of a criminal investigation, including reports or informers, witnesses, and investigators; or
  - (C) Reports prepared or compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through confinement, correctional supervision, and release from supervision.
- (2) The disclosure of which would reveal the identity of a source who furnished information to the agency under an express or implied promise of confidentiality.
- (3) Consisting of testing or examination material or scoring keys used solely to determine individual qualifications for appointment or promotion in public employment, or used as or to administer a licensing examination or an academic examination, the disclosure of which would compromise the

objectivity, fairness, or effectiveness of the testing or examination process.

- (4) Including investigative reports and materials, related to an upcoming, ongoing, or pending civil or criminal action or administrative proceeding against the individual.
- (5) Required to be withheld from the individual to whom it pertains by statute or judicial decision or authorized to be so withheld by constitutional or statutory privilege. [L 1988, c 262, pt of §1]

**[§92F-23] Access to personal record; initial procedure.** Upon the request of an individual to gain access to the individual's personal record, an agency shall permit the individual to review the record and have a copy made within ten working days following the date of the request unless the personal record requested is exempted under section 92F-22. The ten-day period may be extended for an additional twenty working days if the agency provides to the individual, within the initial ten working days, a written explanation of unusual circumstances causing the delay. [L 1988, c 262, pt of §1]

**[§92F-24] Right to correct personal record; initial procedure.** (a) An individual has a right to have any factual error in that person's personal record corrected and any misrepresentation or misleading entry in the record amended by the agency which is responsible for its maintenance.

(b) Within twenty business days after receipt of a written request to correct or amend a personal record and evidence that the personal record contains a factual error, misrepresentation, or misleading entry, an agency shall acknowledge receipt of the request and purported evidence in writing and promptly:

- (1) Make the requested correction or amendment; or
- (2) Inform the individual in writing of its refusal to correct or amend the personal record, the reason for the refusal, and the agency procedures for review of the refusal. [L 1988, c 262, pt of §1]

**§92F-25 Correction and amendment; review procedures.** (a) Not later than thirty business days after receipt of a request for review of an agency refusal to allow correction or amendment of a personal record, the agency shall make a final determination.

(b) If the agency refuses upon final determination to allow correction or amendment of a personal record, the agency shall so state in writing and:

- (1) Permit, whenever appropriate, the individual to file in the record a concise statement setting forth the reasons for the individual's disagreement with the refusal of the agency to correct or amend it; and
- (2) Notify the individual of the applicable procedures for obtaining appropriate judicial remedy. [L 1988, c 262, pt of §1; am L 1989, c 192, §6]

**§92F-26 Rules.** The office of information practices shall adopt rules, under chapter 91, establishing procedures necessary to implement or administer this part, which the agencies shall adopt, insofar as practicable, in order to ensure uniformity among state and county agencies. [L 1988, c 262, pt of §1; am L 1989, c 192, §7]

**§92F-27 Civil actions and remedies.** (a) An individual may bring a civil action against an agency in a circuit court of the State whenever an agency fails to comply with any provision of this part, and after appropriate administrative remedies under sections 92F-23, 92F-24, and 92F-25 have been exhausted.

(b) In any action brought under this section the court may order the agency to correct or amend the complainant's personal record, to require any other agency action, or to enjoin such agency from improper actions as the court may deem necessary and appropriate to render substantial relief.

(c) In any action brought under this section in which the court determines that the agency knowingly or intentionally violated a provision of this part, the agency shall be liable to the complainant in an amount equal to the sum of:

- (1) Actual damages sustained by the complainant as a result of the failure of the agency to properly maintain the personal record, but in no case shall a complainant (individual) entitled to recovery receive less than the sum of \$1,000; and
- (2) The costs of the action together with reasonable attorney's fees as determined by the court.

(d) The court may assess reasonable attorney's fees and other litigation costs reasonably incurred against the agency in any case in which the complainant has substantially prevailed, and against the complainant where the charges brought against the agency were frivolous.

(e) An action may be brought in the circuit court where the complainant resides, the complainant's principal place of business is situated, or the complainant's relevant personal record is situated. No action shall be brought later than two years after notification of the agency denial, or where applicable, the date of receipt of the final determination of the office of information practices. [L 1988, c 262, pt of §1; am L 1989, c 192, §8]

**§92F-27.5 Alternative method to appeal a denial of access.** (a) When an agency denies an individual access to that individual's personal record, the individual may appeal the denial to the office of information practices in accordance with rules adopted pursuant to section 92F-42(12). A decision to appeal to the office of information practices for review of the agency denial shall not prejudice the individual's right to appeal to the circuit court after a decision is made by the office of information practices.

(b) If the decision is to disclose, the office of information practices shall notify the individual and the agency, and the agency shall make the record available. If the denial of access is upheld, in whole or in part, the office of information practices shall, in writing, notify the individual of the decision, the reasons for the decision, and the right to bring a judicial action under section 92F-27. [L 1989, c 192, §2]

**[§92F-28] Access to personal records by order in judicial or administrative proceedings; access as authorized or required by other law.** Nothing in this part shall be construed to permit or require an agency to withhold or deny access to a personal record, or any information in a personal record:

- (1) When the agency is ordered to produce, disclose, or allow access to the record or information in the record, or when discovery of such record or information is allowed by prevailing rules of discovery or by subpoena, in any judicial or administrative proceeding; or
- (2) Where any statute, administrative rules, rule of court, judicial decision, or other law authorizes or allows an individual to gain access to a personal record or to any information in a personal record or requires that the individual be given such access. [L 1988, c 262, pt of §1]

**PART IV. OFFICE OF INFORMATION PRACTICES; DUTIES**

**§92F-41 Office of information practices.** (a) There shall be within the department of the attorney general, for administrative purposes only, an office of information practices.

(b) The governor shall appoint, not subject to chapters 76 and 77, a director of the office of information practices who is its chief executive officer.

(c) All powers and duties of the office of information practices are vested in the director and may be delegated to any other officer or employee of the office.

(d) The director may employ such other personnel as are necessary, including but not limited to attorneys and clerical staff. None of the employees shall be subject to chapter 76 or 77. [L 1988, c 262, pt of §1; am L 1989, c 192, §9]

**§92F-42 Powers and duties of the office of information practices.** The director of the office of information practices:

- (1) Shall, upon request, review and rule on an agency denial of access to information or records, or an agency's granting of access; provided that any review by the office of information practices shall not be a contested case under chapter 91 and shall be optional and without prejudice to rights of judicial enforcement available under this chapter;
- (2) Upon request by an agency, shall provide and make public advisory guidelines, opinions, or other information concerning that agency's functions and responsibilities;
- (3) Upon request by any person, may provide advisory opinions or other information regarding that person's rights and the functions and responsibilities of agencies under this chapter;
- (4) May conduct inquiries regarding compliance by an agency and investigate possible violations by any agency;
- (5) May examine the records of any agency for the purpose of paragraph (4) and seek to enforce that power in the courts of this State;
- (6) May recommend disciplinary action to appropriate officers of an agency;
- (7) Shall report annually to the governor and the state legislature on the activities and findings of the office of information practices, including recommendations for legislative changes;
- (8) Shall receive complaints from and actively solicit the comments of the public regarding the implementation of this chapter;
- (9) Shall review the official acts, records, policies, and procedures of each agency;
- (10) Shall assist agencies in complying with the provisions of this chapter;
- (11) Shall inform the public of the following rights of an individual and the procedures for exercising them:
  - (A) The right of access to records pertaining to the individual;
  - (B) The right to obtain a copy of records pertaining to the individual;
  - (C) The right to know the purposes for which records pertaining to the individual are kept;
  - (D) The right to be informed of the uses and disclosures of records pertaining to the individual;
  - (E) The right to correct or amend records pertaining to the individual; and
  - (F) The individual's right to place a statement in a record pertaining to that individual;

- (12) Shall adopt rules that set forth an administrative appeals structure which provides for (A) agency procedures for processing records requests; (B) a direct appeal from the division maintaining the record; and (C) time limits for action by agencies;
- (13) Shall adopt rules that set forth the fees and other charges that may be imposed for searching, reviewing, or segregating disclosable records, as well as to provide for a waiver of such fees when the public interest would be served;
- (14) Shall adopt rules which set forth uniform standards for the records collection practices of agencies;
- (15) Shall adopt rules that set forth uniform standards for disclosure of records for research purposes;
- (16) Shall have standing to appear in cases where the provisions of this chapter are called into question; and
- (17) Shall adopt, amend, or repeal rules pursuant to chapter 91 necessary for the purposes of this chapter. [L 1988, c 262, pt of §1; am L 1989, c 192, §10]

## CHAPTER 93 GOVERNMENT PUBLICATIONS

### PART I. STATE PUBLICATIONS DISTRIBUTION CENTER

#### §93-2 Definitions.

##### Attorney General Opinions

"Publication" includes agency administrative rules. Att. Gen. Op. 85-15.

## CHAPTER 94 PUBLIC ARCHIVES; DISPOSAL OF RECORDS

### SECTION

#### 94-7 ACCESS TO RESTRICTED RECORDS IN THE STATE ARCHIVES

§94-7 Access to restricted records in the state archives. Historical records which are transferred to the state archives shall be retained for posterity and title shall vest in the state archives. All restrictions on access to government records which have been deposited in the state archives, whether confidential, classified, or private, shall be lifted and removed eighty years after the creation of the record. [L 1989, c 79, §1; am L 1991, c 145, §2]

## CHAPTER 95 DESTROYING OR DEFACING OFFICIAL NOTICES

REPEALED. L 1991, c 223, §3.

# EXHIBIT 1321

HAWAII ADMINISTRATIVE RULES CHAPTER 17-1321  
STATE PLAN AMENDMENT #93-005

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 8 HEALTH CARE ADMINISTRATION DIVISION

CHAPTER 1321

ADMINISTRATIVE PROCEEDING FOR PROVIDER REVIEW

Subchapter 1 General Provisions for Provider  
Review

§17-1321-1	Purpose
§17-1321-2	Definitions
§17-1321-3	Providers' right to review
§17-1321-4	Limitation of the right to review
§17-1321-5	Appearance by representatives of the provider and the department
§17-1321-6	Forms for papers
§17-1321-7	Notice, service, and proof of service
§17-1321-8	Notice of formal hearing; notice of decision
§17-1321-9	Conduct of hearing
§17-1321-10	Witnesses and subpoenas
§17-1321-11	Amendments
§17-1321-12	Continuances or further hearings
§17-1321-13	Record of hearing
§17-1321-14	Decision of the hearing officer
§17-1321-15	Dismissal upon failure to appear at hearings
§17-1321-16	Administrative appeal to the director
§§17-1321-17 to 17-1321-26	(Reserved)

Subchapter 2 Reimbursement Related Review  
Proceedings for Hospital and  
Institutional Providers

§17-1321-27	Determination of medicaid reimbursement
§17-1321-28	Provider's right to review
§17-1321-29	Limitation of the right to review
§17-1321-30	Appearance by representatives of the provider and the department
§17-1321-31	Forms for papers
§17-1321-32	Notice, service, and proof of service



§17-1321-1

§17-1321-33 Notice of formal hearing; notice of  
results of formal hearing  
§17-1321-34 Waiver of the right for oral hearing  
§17-1321-35 Prehearing conference  
§17-1321-36 Conduct of hearing  
§17-1321-37 Prehearing discovery  
§17-1321-38 Witnesses and subpoenas  
§17-1321-39 Amendments  
§17-1321-40 Continuances or further hearings  
§17-1321-41 Record of hearing  
§17-1321-42 Decision of the hearing officer  
§17-1321-43 Dismissal upon failure to appear at  
hearings  
§17-1321-44 Administrative review by the director  
§17-1321-45 Reopenings

Historical Note: This chapter is based substantially  
upon chapter 17-748 of the Hawaii Administrative Rules.  
[Eff 7/19/82; am 12/21/84; am and comp 8/9/85; am  
9/7/85; am 3/28/89; am 5/19/89; am 1/1/90; R  
JUN 29 1992 ]

## SUBCHAPTER 1

### GENERAL PROVISIONS FOR PROVIDER REVIEW

§17-1321-1 Purpose. The purpose of this chapter  
shall be to establish provisions for a provider's right  
to review and hearing following any administrative  
decision made by the DHS which directly and adversely  
affects the rights of that provider or the  
reimbursement claimed under the medical assistance  
program. [Eff JUN 29 1992 ] (Auth: HRS §346-14; 42  
C.F.R. §431.10) (Imp: HRS §346-14; 42 C.F.R.  
§§431.10, 455.12)

§17-1321-2 Definitions. As used in this chapter:  
"Abuse" means to put to a wrong or improper use  
the health care services available under the Hawaii  
medical assistance program. It includes, but is not  
limited to, providing or receiving health care services  
where no medical need exists, providing or receiving  
health care services where the recipient is not legally  
entitled to medicaid, providing or receiving services  
in excess of that medically needed by the recipient,

presenting a claim for services not provided, or presenting a claim for services in excess of those actually provided or needed. Abuse may exist where the provider or recipient acts negligently or recklessly.

"Department" means the department of human services.

"Determination" means the amount of reimbursement due to a provider under the medicaid program as summarized on the notice of program reimbursement (NPR) or notice of PPS rate.

"DHHS" means the United States Department of Health and Human Services.

"DHS" means the department of human services.

"Fraud" means the knowing and wilful making, or causing to make, by any person in the medical assistance program of any false statement or representation of material fact in any application for benefits or payment for furnishing services or supplies, or for the purpose of obtaining greater compensation than the person is legally entitled to, or for obtaining authorization for furnishing services or supplies. If any of the conditions stated above exist, then there is fraud whether or not any payment is actually received from the Hawaii medical assistance program. For purposes of this chapter, fraud may exist whether or not a judgment has been made by a court of this State having jurisdiction over criminal matters.

"Medical assistance program" includes, but is not limited to, medicaid and all medical services provided to clients under the general assistance category.

"PPS rate" means the prospective payment system annual rate assigned each medicaid institutional provider.

"Provider" means an individual or entity which furnishes health care goods or services such as those authorized for payment under the Hawaii medical assistance program. It covers all persons or entities validly licensed or permitted to provide health care services. Providers shall be certified by the Hawaii medical assistance program.

"Suspension" means exclusion of a provider from participation in the Hawaii medical assistance program by withdrawing the provider's certification for a specified period of time. At the conclusion of the time specified in the suspension, the suspension expires and certified provider status resumes without further action.

"Termination" means an exclusion of a provider from participation in the Hawaii medical assistance